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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA83

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Banco Delta Asia, Including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (“FinCEN”) is issuing a final rule imposing a special measure against Banco Delta Asia SARL (“Banco Delta Asia” or “the bank”) as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (“USA PATRIOT Act”). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act,

codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (“the Secretary”) to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of FinCEN (“the Director”).¹ The Bank Secrecy Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.²

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Director the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Director to consider and Federal agencies to consult before we may find that reasonable grounds exist for concluding that a jurisdiction, institution, class of transactions, or type of account is of

¹ Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network. Accordingly, authorities granted to the Secretary are attributed to the Director of FinCEN in this rulemaking.

² Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the USA PATRIOT Act.

primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Director with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Director is required by the Bank Secrecy Act to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, when finding that a foreign financial institution is of primary money laundering concern, the Director is required by section 311 to consider “such information as [we] determine[] to be relevant, including the following potentially relevant factors:”

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;

- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the Bank Secrecy Act continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If we determine that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, we must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, or jointly, in any combination, and in any sequence.³ In the imposition of special measures, we follow procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but we also engage in additional consultations and consider additional factors. Section 311 requires us to consult with other appropriate Federal agencies and parties⁴ and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;

³ Available special measures include requiring: (1) recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1) - (5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

⁴ Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, and, in our sole discretion, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern. 31 U.S.C. 5318(c)(1).

- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on U.S. national security and foreign policy.⁵

In this final rule, we are imposing the fifth special measure (31 U.S.C. 5318A(b)(5)) against Banco Delta Asia, a commercial bank in Macau, Special Administrative Region, China (“Macau”). The fifth special measure allows for the imposition of conditions upon, or the prohibition of, the opening or maintaining of correspondent or payable-through accounts in the United States for or on behalf of a foreign financial institution of primary money laundering concern. Unlike the other special measures, this special measure may be imposed only through the issuance of a regulation.

B. Banco Delta Asia

Banco Delta Asia, located and licensed in Macau, is the commercial banking arm of its parent company, Delta Asia Group (Holdings) Ltd. (“Delta Asia Group”).⁶ In

⁵ Classified information used in support of a section 311 finding of primary money laundering concern and imposition of special measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Pub. L. 108-177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

⁶ The Bankers’ Almanac (2006). For purposes of this rulemaking, our finding of primary money laundering concern and imposition of special measures shall apply exclusively to Banco Delta Asia and its

addition to commercial banking, Delta Asia Group engages in investment banking and insurance activities. Banco Delta Asia was originally established in 1935 as Banco Hang Sang,⁷ and its name changed to Banco Delta Asia in December 1993. According to Banco Delta Asia's representations to us, the bank had roughly \$205 million (U.S. dollars) in assets as of July 2006. Banco Delta Asia operates eight branches in Macau (including a branch at a casino) and is served by a representative office in Japan. According to statements made by Banco Delta Asia, many of its foreign correspondent relationships in North America, Europe, and Asia were terminated after the publication of our finding of primary money laundering concern, and the bank no longer maintains a foreign correspondent account in the United States.⁸ Banco Delta Asia may still have indirect access to the U.S. financial system, however, via nested correspondent accounts at other foreign financial institutions that have correspondent accounts at covered financial institutions. Banco Delta Asia has two wholly owned subsidiaries: Delta Asia Credit Limited and Delta Asia Insurance Limited.⁹

II. The 2005 Finding and Subsequent Developments

A. The 2005 Finding

Based upon review and analysis of pertinent information, consultations with relevant Federal agencies and parties, and consideration of the factors enumerated in section 311, in September 2005 the Director found that reasonable grounds existed for concluding that Banco Delta Asia was a financial institution of primary money

branches, offices, and subsidiaries, and not to Delta Asia Group (Holdings) Ltd., or any of its other subsidiaries.

⁷ Banco Delta Asia's historical name, Banco Hang Sang, is not to be confused with Hang Seng Bank, a Hong Kong bank, nor the Hang Seng Index, an index of certain shares traded on the Hong Kong Stock Exchange.

⁸ As of November 2006, Bankers' Almanac indicated that the bank maintained one U.S. correspondent relationship, although it is possible that the self-reported data had not been updated.

laundering concern. This finding was published in conjunction with a Notice of Proposed Rulemaking,¹⁰ which proposed prohibiting covered financial institutions from, directly or indirectly, opening or maintaining correspondent accounts in the United States for Banco Delta Asia or any of its branches, offices, or subsidiaries, pursuant to the authority under 31 U.S.C. § 5318A.

The Notice of Proposed Rulemaking outlined the various factors supporting the finding and proposed prohibition.¹¹ Specifically, we stated that Banco Delta Asia had provided financial services for more than 20 years to multiple North Korean-related individuals and entities that were engaged in illicit activities. Sources showed that certain of such entities had paid a fee to Banco Delta Asia for financial access to the banking system with little oversight or control, and that the bank helped conduct surreptitious, multi-million dollar cash deposits and withdrawals on their behalf. In fact, the bank facilitated several multi-million dollar wire transfers connected to alleged criminal activity on behalf of one such company. Banco Delta Asia maintained an uninterrupted banking relationship with one North Korean front company despite the fact that the head of the company was charged with attempting to deposit large sums of counterfeit currency into Banco Delta Asia, for which he was expelled from Macau. Banco Delta Asia also serviced the account of a known international drug trafficker. Treasury's September 2005 Notice also noted that any legitimate business use of Banco Delta Asia appeared to be significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.

⁹ The Bankers' Almanac (2006).

¹⁰ See 70 FR 55214 (Finding) (Sept. 20, 2005); 70 FR 55217 (Notice of Proposed Rulemaking) (Sept. 20, 2005).

¹¹ *Id.*

Treasury determined that a finding that Banco Delta Asia was of primary money laundering concern and prohibiting covered financial institutions from opening or maintaining correspondent accounts for that institution would prevent suspect accountholders at Banco Delta Asia from accessing the U.S. financial system to facilitate money laundering. It would also bring criminal conduct occurring at or through Banco Delta Asia to the attention of the international financial community and thus serve the purposes of the Bank Secrecy Act as well as guard against international money laundering and other financial crime.

B. Jurisdictional Developments

As Special Administrative Region to the People's Republic of China, Macau retains substantial autonomy in all areas related to the regulation and oversight of its financial services sector and domestic economic affairs. Macau's financial system, including its robust casino and gaming sector, has historically been known to be vulnerable to financial crime,¹² due in large part to an under-developed anti-money laundering regime. As discussed below, however, Macau has begun to take important steps to address those systemic concerns.

While Macau has worked to develop its anti-money laundering and counter-terrorist financing framework since the 1990s, and has joined regional groups such as the Asia Pacific Group on Money Laundering (APG) to aid these efforts, Macanese authorities have taken a number of additional important steps since the September 2005

¹² See, e.g.: <http://www.fas.org/irp/threat/pub45270index.html> (International Crime Threat Assessment, 2000); <http://archives.cnn.com/1999/ASIANOW/east/macau/stories/macau.north.korea/index.html> (1999); http://www.asiapacificms.com/articles/north_korea_banking/ (2003); <http://www.gluckman.com/MacauHo.html> (1997); <http://www.asiaweek.com/asiaweek/98/1030/nat7.html> (1999); <http://archives.cnn.com/1999/ASIANOW/east/macau/profiles/edmond.ho/> (1999); <http://www.asianpacificpost.com/portal2/pageView.html?id=402881910674ebab010674f4ca74141f>; etc.

Notice of Proposed Rulemaking on Banco Delta Asia to address the reported money laundering risks and systemic vulnerabilities.¹³ In April 2006, Macau enacted Law no. 2/2006 on *Prevention and Repression of the Crime of Money Laundering* and Law no. 3/2006 on *Prevention and Repression of the Crime of Terrorism*. The new law on money laundering replaces and supersedes existing money laundering legislation, Decree-Law 24/98/M, and the provisions on money laundering in Law 6/97/M against organized crime, and makes comprehensive and stand-alone the crime of money laundering. Further, it broadens the scope of predicate offences to all serious crimes,¹⁴ including terrorism, and is extended to conduct occurring outside of Macau. Violations of the anti-money laundering law are punishable with a penalty of imprisonment of not less than three years, “as well as [forfeiture of] any assets obtained therefrom.”

In addition, in May 2006, Macau enacted Administrative Regulation no. 7/2006 – *Preventive Measures Against Money Laundering and Financing Terrorism* – a set of implementing measures related to the new laws which statutorily went into full legal effect on November 12, 2006. The regulation broadens and clarifies the obligations of covered institutions regarding identification of customers and contract parties as well as the nature, purpose, and source of funds and transactions performed; requires recordkeeping and reporting of suspicious and large cash transactions; and obligates institutions to refuse transactions absent adequate information. Further, the regulation provides for fines (between 10,000 and 500,000 patacas¹⁵ for a natural person

¹³ Macao, China, Jurisdiction Report (to Asia Pacific Group Annual Meeting), 2006. PROGRESS REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE APG EVALUATION REPORT, 2006.

¹⁴ “Serious crimes” are defined as crimes carrying a punishment of two to eight years imprisonment.

¹⁵ The domestic currency of Macau. As of February 2007, the exchange rate for patacas to U.S. dollars was approximately 8:1.

and between 100,000 and 5,000,000 patacas for a legal person) against those found to be in violation of the anti-money laundering laws. The regulation, applicable to multiple sectors (financial and designated non-financial businesses and professions) now covered under the new provisions, is aimed at combating the financing of terrorism and money laundering and stipulates that the duties established under the new provisions will be applied by the following supervisory and regulatory agencies in relation to the entities subject to their respective supervision: Macao¹⁶ Monetary Authority, Gaming Inspection and Coordination Bureau, Macao Trade and Investment Bureau, Finance Department, Macao Lawyers Association, Independent Commission for the Exercise of the Disciplinary Power over Solicitors, Legal Affairs Bureau, and Macau Economic Department. The new regulation has also specified penalties for non-compliance by covered institutions.

The Office of Financial Intelligence (“GIF”) was established by Order of the Chief Executive no.227/2006 in August 2006 and began operations on November 12, 2006. As provided in the order, this office will function as Macau’s financial intelligence unit (“FIU”), collecting, analyzing and disseminating information on suspicious and large cash transactions and cooperating as necessary with international FIUs. GIF also has the responsibility for reporting suspected money laundering activities to the Public Prosecutions Office and, to the extent capable and necessary, for providing technical assistance to covered institutions and all regulatory bodies subject to the new legislation.

Macanese authorities have created a Money Laundering Related Crime Division (a special investigative agency dedicated to financial crimes) within the Judiciary Police.

¹⁶ The Macanese government recognizes both “Macau” and “Macao” as the correct spelling of the jurisdiction. Certain government agencies and publications use the more traditional Portuguese spelling,

A separate law governing international mutual legal assistance in criminal matters, Law no. 6/2006 on *Judicial Cooperation in Criminal Matters*, was approved by the Legislative Assembly (“LA”) in July 2006 and became effective November 1, 2006.

Finally, while Customs authorities in Macau require declaration of cross-border trade movements in goods and valuables, there are currently no provisions to monitor or declare cross-border currency movements in and out of Macau. Macanese authorities have stated they are undertaking a study on this issue that will help inform authorities on the development of a potential strategy to effectively address cross-border currency movements. However, no specific strategy has been formulated to date.

While these efforts are important and welcome signs of Macau’s overall progress in strengthening its anti-money laundering and combating the financing of terrorism regime, full and comprehensive implementation of these measures in all the covered sectors will need to follow.

C. Banco Delta Asia’s Subsequent Developments

Shortly after the issuance of our finding and Notice of Proposed Rulemaking, the Macau Monetary Authority appointed a three person “administrative committee” that temporarily replaced the senior management of the bank to oversee the daily operations of the bank and address the concerns we raised.¹⁷ Although the executive order appointing the committee and establishing their six-month term has twice been extended, no plan has been proffered to change permanently the management or ownership

Macao.

¹⁷ The administrative committee consists of the Chief Executive Officer of a note-issuing bank in Macau, the Deputy Director of the Macau Monetary Authority Internal Audit Department, and an attorney from a prominent Macanese law firm. No employees or former employees of the bank were appointed to the administrative committee. The present term is scheduled to continue through March 2007.

structure of the bank, notwithstanding the egregious historical practices detailed below.¹⁸

Given the possibility that the bank will be returned to the control of its former management and primary shareholder in the future, our ongoing concerns about their historical practices and their potential for recidivism detailed below remain a reasonable basis both for our conclusion that Banco Delta Asia is of primary money laundering concern and for our imposition of a special measure to safeguard the U.S. financial system.

Representatives of the bank informed us that the government-appointed administrative committee has taken steps to address many of the money laundering concerns that we previously identified.¹⁹ For example, two independent accounting firms were retained²⁰ to investigate the allegations in the Notice of Proposed Rulemaking, to assess the weaknesses in the bank's internal anti-money laundering procedures, and to assist in the development of a revised anti-money laundering program (a process that reportedly is still ongoing more than a year later). These representatives also reported that the administrative committee has begun to recruit a permanent compliance officer²¹ and that all North Korean-related accounts previously maintained by the bank have been closed.

Despite these representations, we continue to have serious concerns regarding the bank's potential to be used, wittingly or unwittingly, for illicit purposes. In fact,

¹⁸ Even to the extent that the bank's former management is permanently replaced, we note that the former chief executive officer and chairman of the board is also the controlling owner of the bank and would still possess significant influence over the operations of the bank.

¹⁹ The bank met with representatives from the U.S. Government in November 2005, and February and July 2006. The bank also provided information in writing through the comment process described in the Notice of Proposed Rulemaking.

²⁰ According to the bank's representations to us, one firm was retained by the Macau Monetary Authority and one was retained by the bank under the oversight of the administrative committee.

²¹ We have recently been informed that Banco Delta Asia has hired a compliance officer.

questions regarding the completeness and accuracy of the information and records provided by the bank to the accounting firm retained to help address the bank's weaknesses resulted in the firm's disclaimer that its reported findings did not constitute a reliable audit. Our investigation has corroborated these concerns.²² For example, we are aware of multiple North Korean-related accounts that the bank did not identify to the accounting firm and, hence, the accounting firm did not review.

In a review of recently obtained data pertaining to Banco Delta Asia, we verified the bank had grossly inadequate controls in place to deter or detect money laundering or other illicit activity.²³ Prior to the government's appointment of the administrative committee, there was a systemic lack of due diligence, including:

- Failure to take reasonable measures to identify suspicious activity, suspicious entities, and bulk cash activity inconsistent with the stated business of the bank's clients;
- Failure to obtain or maintain sufficient information regarding identity verification and the nature of business activities in customer files;
- Failure to adequately control and retain documents relating to the bank's largest wholesale bulk cash customers;
- Failure to consistently follow its own policies and procedures with respect to multiple business offerings, including screening for counterfeit currency;

²² These conclusions were derived in part from classified sources, but primarily from an independent review by a large international accounting firm of Banco Delta Asia's activity with North Korean-related clients and a separate U.S. Government review of Banco Delta Asia documentation, including that used to conduct the independent review.

²³ See *supra* footnote 22.

- Failure to effectively rate the risk of its customer base; to monitor, on an ongoing basis, accounts that should have been designated as high risk; to take corrective action against entities in which illicit activity was detected;
- Failure to update or use sufficient information technology systems when manual systems proved inadequate;
- Failure to regularly update its anti-money laundering policies with new information or best practices; and
- Failure to internally audit the adequacy of the compliance department at the bank.

In a review of this same data,²⁴ we have also verified that the bank's grossly inadequate due diligence facilitated unusual or deceptive financial practices by North Korean-related clients. These practices have included:

- Suppressing the identity and location of originators of transactions and arranging for funds transfers via third parties.
- Repeated bank transfers of large, round-figure sums both to and from accounts held at other banks that appear to have no licit purpose and may be indicative of layering activity.
- The routine use of cash couriers to move large amounts of currency, usually U.S. dollars, in the absence of any credible explanation of the origin or purpose for the cash transactions. For example, records from 2002 show that one North Korean-linked entity deposited the

²⁴ See *supra* footnote 22.

equivalent of over U.S. \$50 million, accounting for more than half of Banco Delta Asia's bulk cash deposits that year.

- Internal book transfers involving the movement of funds among accounts and accountholders via intra-bank transfers occurring repeatedly and in large, round-figure sums. This sometimes involved shifting currencies and significant round-figure transfers between business and personal accounts.²⁵

Moreover, in our review of this same data, we became aware that the extent to which the bank was historically used for illicit activity exceeds our original findings and reveals a deliberate effort to attract and maintain high-risk accounts regardless of their nexus to illicit activities. A review of recently obtained data pertaining to Banco Delta Asia's historical activity has established the following:²⁶

- Many North Korean-related individuals and companies banking at Banco Delta Asia had connections to entities involved in trade in counterfeit U.S. currency, counterfeit cigarettes, and narcotics, including several front companies suspected of laundering hundreds of millions of dollars in cash through Banco Delta Asia.²⁷ The bank did not conduct due diligence to attempt to verify the source of the unusually large currency deposits made involving these clients.

²⁵ Inasmuch as Banco Delta Asia was the sole institution involved in the processing of these transactions, and considering our concerns regarding the bank's potential complicity involving illicit activity, the commingling of funds and the rapid movement of large round figure amounts via such intra-bank transfers is particularly suspicious as a means of obscuring the true nature and source of the funds involved.

²⁶ See *supra* footnote 22.

²⁷ This level of activity is significant considering the bank reported the equivalent of only \$390 million in total customer deposits immediately prior to our Notice of Proposed Rulemaking.

- Despite widely reported currency counterfeiting concerns, the bank provided a discount as an incentive to a high-risk North Korean-related bulk currency depositor to encourage its continued use of the bank, and continued to accept deposits from that customer even after it had knowledge that another institution had rejected those transactions.

These activities, in aggregate, should have raised significant concerns at the bank. Internal bank documents reveal that in the few cases where bank employees documented their concerns over the potential for money laundering activity by entities making commercially unjustifiable large cash deposits or engaged in other suspicious behavior, senior management of the bank consistently failed to take any action when appropriate explanations for the activity were not provided. In fact, senior management in certain cases would verbally vouch for the customers in question without any documentary evidence and indicate that the transactions should continue to be processed.²⁸

Banco Delta Asia provided North Korean-related entities with tailored services that allowed those entities to engage in extraordinarily deceptive financial activity. For example, two related business accountholders, which accounted for more than 30 percent of the bank's bulk cash turnover over a multiple year period, provided intermediary financial services on behalf of North Korean banks at least in part to disguise the origins of the transactions. Bank documents reveal that Banco Delta Asia had knowledge of the relationships between the banks and these entities, willingly obscured the identity of the transacting institutions, and agreed to continue treating the accounts as business accounts, not banking accounts, despite activity consistent with banking.

²⁸ See *supra* footnote 22.

Even after our finding of primary money laundering concern, the bank's management dismissed concerns presented by independent reviewers of the bank's shortcomings involving customer identification and ongoing due diligence obligations. For example, bank managers asserted that Banco Delta Asia's North Korean client banks were low-risk based on the effective supervision by the Central Bank of North Korea and the unlikelihood that North Korean government-owned entities would be used for illicit purposes. As publicly available information clearly contradicted these assumptions, the bank management's claims seem overly permissive and fail to meet even the most basic due diligence standards. In fact, the Macau Monetary Authority informed the bank in 2004 in writing that North Korea lacked transparency in supervisory standards. It recommended that the bank either strengthen its due diligence procedures and establish a detailed procedure manual for dealing with North Korean banks, or scale down or terminate this type of risky business. Nevertheless, the management of the bank continued to provide uninterrupted financial services to such customers with minimal or no due diligence. In fact, in the face of concerns expressed by the Macau Monetary Authority and the U.S. Department of the Treasury, a senior bank official assured the public that Banco Delta Asia's cessation of business with North Korean accountholders was only a temporary measure to resolve the bank's dispute with FinCEN.²⁹

Representatives of the bank maintain that the administrative committee has taken or is in the process of taking some measures to address the concerns raised in our finding and Notice of Proposed Rulemaking, including terminating all North Korean-related accounts, conducting a risk-assessment of all accountholders, drafting a revised anti-

²⁹ See <http://www.forbes.com/finance/feeds/afx/2005/09/18/afx2230247.html> "Macau Banco Delta Asia halts NKorea business, denies money laundering- report." (19 September 2005)

money laundering program, and upgrading its information technology systems.³⁰ In one of its comments submitted in response to the Notice of Proposed Rulemaking, the bank stated that these remedial measures and Macau's new regulatory controls would prevent the bank from returning to its former business practices.³¹ However, the totality of the information presented above casts significant doubt upon the commitment of the bank, apart from the administrative committee, to resolve effectively the ongoing money laundering vulnerabilities at the bank. The administrative committee's termination of North Korean-related customer relationships does not address effectively the bank's historical proclivity to seek out such customers or the potential of the bank to return to such practices. In fact, historical attempts by bank employees to follow the limited procedures or best practices that were in place at that time were quashed at the highest levels of the bank.

Despite any remedial measures and regulatory changes, this historical pattern of disregard by the bank's management and primary shareholder regarding both the systemic due diligence failures at the bank and the potential use of the bank for illicit purposes, and the resultant likelihood of recidivism upon the dissolution of the administrative committee, leave us concerned about the potential for the bank to continue to be used for money laundering and other illicit purposes. Accordingly, we find that Banco Delta Asia continues to be a financial institution of primary money laundering concern.

III. Imposition of the Fifth Special Measure

Consistent with the finding that Banco Delta Asia is a financial institution of

³⁰ The bank has indicated that it has not yet fully implemented new policies, procedures, and controls for money laundering prevention.

primary money laundering concern, and based upon additional consultations with required Federal agencies and parties, as well as consideration of additional relevant factors, including the comments received on the proposed rule, we are imposing the fifth special measure authorized by 31 U.S.C. § 5318A(b)(5) with regard to Banco Delta Asia.³² That special measure authorizes the prohibition of, or the imposition of conditions upon, the opening or maintaining of correspondent or payable-through accounts³³ by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern. A discussion of the additional section 311 factors relevant to the imposition of this particular special measure follows.

A. Similar Actions Have Not Been or May Not Be Taken by Other Nations or Multilateral Groups against Banco Delta Asia

At this time, other countries and multilateral groups have not taken any action against Banco Delta Asia similar to the imposition of the fifth special measure pursuant to section 311, which prohibits U.S. financial institutions and financial agencies from opening or maintaining a correspondent account in the United States for or on behalf of Banco Delta Asia and requires those institutions and agencies to guard against indirect use by Banco Delta Asia of the foreign correspondent accounts they maintain. After the issuance of the Notice of Proposed Rulemaking, however, the government of Macau did indicate its concern with illicit money flows into Banco Delta Asia by freezing accounts believed to be associated with illicit North Korean-related activity.

³¹ Additional comments submitted on behalf of the bank are discussed in Section IV of this Final Rule.

³² See *supra* footnote 3.

³³ For purposes of the rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank (see 31 USC § 5318A(e)(1)(B), as implemented in 31 CFR §

B. The Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated with Compliance for Financial Institutions Organized or Licensed in the United States

The fifth special measure imposed by this rule prohibits covered financial institutions from opening or maintaining correspondent accounts in the United States for, or on behalf of, Banco Delta Asia. As a corollary to this measure, covered financial institutions also are required to take reasonable steps to apply due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to Banco Delta Asia. The burden associated with these requirements is not expected to be significant, given that we are not aware of any covered financial institution that maintains a correspondent account directly for Banco Delta Asia. Moreover, there is a minimal burden involved in transmitting a one-time notice to all correspondent accountholders concerning the prohibition on indirectly providing services to Banco Delta Asia. In addition, covered financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software, such as that used for compliance with the economic sanctions programs administered by the Department of the Treasury's Office of Foreign Assets Control. As explained in more detail in the section-by-section analysis below, financial institutions should be able to adapt their existing screening procedures to comply with this special measure. Thus, the due diligence that is required by this rule is not expected to impose a significant additional burden upon covered financial institutions.

C. The Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement

103.175(d)(1)(ii)).

System, or on Legitimate Business Activities Involving Banco Delta Asia

Banco Delta Asia is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against Banco Delta Asia will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In addition, as the bank historically sought out high-risk customers that represented entire business lines and a material amount of its overall business, we believe that any legitimate use of Banco Delta Asia is significantly outweighed by its potential and reported use to promote or facilitate money laundering. Moreover, in light of the existence of multiple alternative banks in Macau, we believe that imposition of the fifth special measure against Banco Delta Asia will not impose an undue burden on legitimate business activities in Macau.

D. The Action Enhances U.S. National Security and Complements U.S. Foreign Policy

The exclusion from the U.S. financial system of banks such as Banco Delta Asia that serve as conduits for significant money laundering activity and that participate in other financial crime enhances U.S. national security by making it more difficult for criminals to access the substantial resources and services of the U.S. financial system. In addition, the imposition of the fifth special measure against Banco Delta Asia complements the U.S. government's overall foreign policy strategy of making entry into the U.S. financial system more difficult for high-risk financial institutions located in jurisdictions with weak or poorly implemented and enforced anti-money laundering controls.³⁴

³⁴ As previously mentioned, although Macau's legislative and regulatory developments regarding its overall

IV. Notice of Proposed Rulemaking and Comments

We received two comment letters on the Notice of Proposed Rulemaking within the timeframe established in the Notice.³⁵ Additional comments were submitted on behalf of Banco Delta Asia subsequent to that timeframe but were considered at the bank's request for purposes of this rulemaking. Additionally, we met with representatives of Banco Delta Asia on three separate occasions after the close of the comment period. We did not receive any comments addressing our description in the Notice of Proposed Rulemaking of the illicit activities of North Korea.³⁶

One comment letter was from an individual at a U.S. university. This comment suggested that the potential for indirect access by an entity of primary money laundering concern was not adequately addressed by the notification provision and requirement to monitor for indirect access. The commenter did not suggest a viable alternative, and we believe that the combination of notification and screening provides the appropriate balance between effectiveness and burden in preventing Banco Delta Asia from accessing correspondent accounts at covered financial institutions. This commenter also expressed concern over the potential difficulty for detecting indirect access by Banco Delta Asia, considering its multiple branches and subsidiaries and its relationship to its parent company and its other subsidiaries. The commenter provided a description of what she considered best practices for institutions to identify indirect access in light of this perceived difficulty. As we indicated in the Notice of Proposed Rulemaking, the scope of

anti-money laundering and counter-financing of terrorism regime are encouraging, Macau will need to more fully demonstrate implementation to continue improving its weaknesses.

³⁵ Comments were to be submitted by October 20, 2005. See 70 FR 55217 (September 20, 2005).

³⁶ See 70 FR 55214 (September 20, 2005) at 55215.

the finding of primary money laundering concern, and therefore the target of the imposition of special measure, is limited only to Banco Delta Asia and its subsidiaries, not to its parent company or any of the parent company's other subsidiaries.³⁷

Additionally, although this final rule requires covered financial institutions to take certain minimum due diligence measures, the methodology or best practices for implementing those requirements falls outside the scope of this rulemaking.

All of the remaining comments, both within and outside of the timeframe designated in the Notice of Proposed Rulemaking, were submitted on behalf of Banco Delta Asia. The bank requested that FinCEN revoke the finding of primary money laundering concern and the Notice of Proposed Rulemaking in light of remedial steps the bank claims that it, and the government of Macau, had taken or are in the process of taking to address the concerns we raised. As indicated above, however, our primary concern regards a pattern of activity by the former and presumed future senior management and owners of the bank to ignore, facilitate, or even encourage illicit activity. Consequently, despite any preliminary steps taken under the oversight of the administrative committee, we remain concerned about the extent to which the bank still could be used for illicit purposes.

In its comments, the bank also addressed the statutory criteria we are required to consider when imposing the special measure to prohibit covered financial institutions from opening or maintaining correspondent accounts for Banco Delta Asia. The bank cited the fact, and we acknowledged in the proposed rule, that no other countries or jurisdictions had taken similar action to the one we were proposing. However, after the issuance of the Notice of Proposed Rulemaking asserting illicit flows of money into

³⁷ See 70 FR 55218, FN 5.

Banco Delta Asia involving North Korean-related entities, the Government of Macau was concerned enough to freeze some of the funds in the those accounts. The bank further indicated that the jurisdiction of Macau, immediately following the issuance of the Notice of Proposed Rulemaking, had assumed operational control of the bank and provided liquidity after roughly one-third of the bank's total deposits were withdrawn by the bank's depositors. The bank cited these measures as indicia of Macau's faith in the bank and suggested that any concerns we may have had about the bank should be satisfied in light of Macau's oversight of and investment in the future of the bank. Despite our comments about the jurisdictional developments in section II.B., above, Macau's imposed oversight of the bank not only does not negate our original findings but, to the extent such action indicates a lack of faith in the bank's ability to autonomously address its significant money laundering vulnerabilities, may be viewed as supporting our finding of primary money laundering concern.

The bank also cited the lack of confidence in the bank by the bank's depositors as evidence of a "significant adverse impact... on legitimate business activities involving [the bank]," another statutory criteria we must consider. Although we recognize that certain customers of Banco Delta Asia will be affected by this rulemaking, the availability of alternative banking services in Macau will alleviate the burden on legitimate business activities within that jurisdiction. Moreover, to the extent that the bank has not sufficiently implemented remedial measures that address the deficiencies outlined above, we continue to believe that the impact of the rule upon any legitimate activities of the bank is significantly outweighed by the potential for the bank to be used for money laundering or other illicit financial activity.

Finally, the bank suggested in its comments that imposing the fifth special measure would be inconsistent with U.S. foreign policy considerations. We disagree.

Accordingly, the statutory criteria for finding Banco Delta Asia to be a financial institution of primary money laundering concern and for imposing the fifth special measure have been fully addressed.

V. Section-by-Section Analysis

The final rule prohibits covered financial institutions from opening or maintaining any correspondent account for, or on behalf of, Banco Delta Asia. Covered financial institutions are required to apply due diligence to their correspondent accounts to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include two elements. First, a covered financial institution must notify its correspondent accountholders that the account may not be used to provide Banco Delta Asia with access to the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of correspondent accounts by Banco Delta Asia, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents.

A. 103.193(a) - Definitions

1. Banco Delta Asia

Section 103.193(a)(1) of this rule defines Banco Delta Asia to include all branches, offices, and subsidiaries of Banco Delta Asia operating in Macau or in any jurisdiction. These branches and offices include, but are not necessarily limited to, the Amaral, Antonio, Barca, Campo, Ioa Hon, Lisboa, Outubro, and Tap Sac branches in Macau, the Airport Service Centre, Financial Services Centre, Macao Administrative Centre, The Bank Centre, and the Tokyo Representative Office. Banco Delta Asia's subsidiaries include, but are not necessarily limited to, Delta Asia Credit Ltd. and Delta Asia Insurance Limited. FinCEN will provide updated information, as it is available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Banco Delta Asia.

2. Correspondent Account

Section 103.193(a)(2) defines the term "correspondent account" by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established for a foreign bank to receive deposits from, or make payments or other disbursements on behalf of the foreign bank, or to handle other financial transactions related to the foreign bank.

In the case of a depository institution in the United States, this broad definition of account includes most types of banking relationships between the depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (“mutual funds”), we are using the same definition of “account” for purposes of this rule that was established in the final rule implementing section 312 of the USA PATRIOT Act.³⁸

3. Covered Financial Institution

Section 103.193(a)(3) of the rule defines covered financial institution to include the following:

- an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);
- a trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;
- a broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

³⁸ See 31 CFR 103.175(d)(2)(ii)-(iv).

- a futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and
- a mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

In the Notice of Proposed Rulemaking, we defined “covered financial institution” by reference to 31 CFR 103.175(f)(2), the operative definition of that term for purposes of the rules implementing sections 313 and 319 of the USA PATRIOT Act, and we also included in the definition futures commission merchants, introducing brokers, and mutual funds. The definition of “covered financial institution” we are adopting for purposes of this final rule is substantially the same as originally proposed.

B. 103.193(b)—Requirements for Covered Financial Institutions

For purposes of complying with the final rule’s prohibition on the opening or maintaining in the United States of correspondent accounts for, or on behalf of, Banco Delta Asia, we expect a covered financial institution to take such steps that a reasonable and prudent financial institution would take to protect itself from loan or other fraud or

loss based on misidentification of a person's status.

1. Prohibition of Direct Use of Correspondent Accounts

Section 103.193(b)(1) of the rule prohibits all covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Banco Delta Asia. The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Banco Delta Asia.

2. Due Diligence upon Correspondent Accounts to Prohibit Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for Banco Delta Asia, section 103.193(b)(2) requires a covered financial institution to apply due diligence to its correspondent accounts³⁹ that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include notifying correspondent accountholders that correspondent accounts may not be used to provide Banco Delta Asia with access to the covered financial institution. For example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent accountholders:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.193, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, Banco Delta Asia or any of its subsidiaries (including, but not limited to, Delta Asia Credit Limited, and Delta Asia Insurance Limited). The regulations also require us to notify you that you may not provide Banco Delta Asia or any of its

³⁹ Again, for purposes of the final rule, a correspondent account is defined as an account established by a covered financial institution for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. For purposes of this definition, the term account means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions. See 31 CFR 103.175(d)(2).

subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that Banco Delta Asia or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to prevent such access, including, where necessary, terminating your account.

The purpose of the notice requirement is to help ensure that Banco Delta Asia is denied access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Banco Delta Asia. However, we do not require or expect a covered financial institution to obtain a certification from its correspondent accountholders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent accountholders, informing those accountholders that their correspondent accounts may not be used to provide Banco Delta Asia with indirect access to the covered financial institution, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent accountholders.

This final rule also requires a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution is expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that, on its face, lists Banco Delta Asia as the originator's or beneficiary's financial institution, or otherwise references Banco Delta Asia in a manner detectable under the financial institution's normal business screening

procedures. We acknowledge that not all institutions are capable of screening every field in a funds transfer message and that the risk-based controls of some institutions may not necessitate such comprehensive screening. Alternatively, other institutions may perform more thorough screening as part of their risk-based determination to perform “additional due diligence,” as described below. An appropriate screening mechanism could be the mechanism currently used by a covered financial institution to comply with various legal requirements, such as the commercially available software used to comply with the sanctions programs administered by the Office of Foreign Assets Control.

Notifying correspondent accountholders and taking reasonable steps to identify any indirect use of correspondent accounts by Banco Delta Asia in the manner discussed above are the minimum due diligence requirements under this final rule. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the indirect use of its correspondent accounts by Banco Delta Asia, based on risk factors such as the type of services it offers and the geographic locations of its correspondent accountholders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Banco Delta Asia must take all appropriate steps to prevent such indirect access, including, when necessary, terminating the correspondent account. A covered financial institution may afford such foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. We have added language in the final rule clarifying that, should the foreign bank refuse to comply, or if the covered financial institution cannot obtain

adequate assurances that the account will not be available to Banco Delta Asia, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under this rule if it determines that the account will not be used to provide banking services indirectly to Banco Delta Asia.

3. Reporting Not Required

Section 103.193(b)(3) of the rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. However, a covered financial institution must document its compliance with the requirement that it notify its correspondent accountholders that the accounts may not be used to provide Banco Delta Asia with access to the covered financial institution.

VI. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The correspondent accounts that the bank previously held in the United States were closed, and we have no knowledge of any small covered financial institutions maintaining correspondent accounts for other foreign banks that presently maintain a correspondent relationship with Banco Delta Asia.⁴⁰ It therefore appears that Banco Delta Asia no longer holds correspondent accounts in the United

⁴⁰ Despite Banco Delta Asia's representation that the majority of its correspondent accounts at foreign financial institutions were terminated after our finding of primary money laundering concern, the self-reported list of the bank's correspondent accounts in the Banker's Almanac was identical before and after our finding, making it difficult to know with certainty what institutions actually maintain correspondent

States and that most if not all of the nested correspondent accounts to which Banco Delta Asia has indirect access would be with large covered financial institutions. Thus, the prohibition on establishing or maintaining such correspondent accounts will not have a significant impact on a substantial number of small entities. In addition, all covered financial institutions currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by the Office of Foreign Assets Control, can be modified to monitor for the use of correspondent accounts by Banco Delta Asia. Thus, the due diligence that is required by this rule – *i.e.*, the one-time transmittal of notice to correspondent accountholders and screening of transactions to identify any indirect use of a correspondent account – is not expected to impose a significant additional economic burden on small covered financial institutions.

VII. Paperwork Reduction Act of 1995

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and has been assigned OMB Control Number 1506-0045. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The only requirements in the final rule that are subject to the Paperwork Reduction Act are the requirements that a covered financial institution notify its correspondent accountholders that the correspondent accounts maintained on their behalf may not be used to provide Banco Delta Asia with access to the covered financial

accounts with the bank.

institution and the requirement that a covered financial institution document its compliance with this obligation to notify its correspondents. The estimated annual average burden associated with this collection of information is one hour per affected financial institution. We received no comments on this information collection burden estimate.

Comments concerning the accuracy of this information collection estimate and suggestions for reducing this burden should be sent (preferably by fax (202-395-6974)) to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the Internet to Alexander_T._Hunt@omb.eop.gov), with a copy to FinCEN by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, “ATTN: Section 311—Imposition of Special Measure Against Banco Delta Asia” or by electronic mail to regcomments@fincen.treas.gov with the caption “ATTN: Section 311—Imposition of Special Measure Against Banco Delta Asia” in the body of the text.

VIII. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, “Regulatory Planning and Review.”

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, Part 103 of title 31 of the Code of Federal Regulations is amended as follows:

**PART 103 – FINANCIAL RECORDKEEPING AND REPORTING OF
CURRENCY AND FINANCIAL TRANSACTIONS**

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332;
title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

2. Subpart I of Part 103 is amended by adding new § 103.193 as follows:

§ 103.193 Special measures against Banco Delta Asia.

- (a) *Definitions.* For purposes of this section:

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited.

(2) *Correspondent account* has the same meaning as provided in §103.175(d)(1)(ii).

- (3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(2) *Due diligence of correspondent accounts to prohibit indirect use.*

(i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

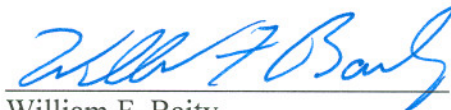
(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Banco Delta Asia.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: 14 March 2007



William F. Baity
Acting Director
Financial Crimes Enforcement Network